

# To his Grace His Majesties High Commissioner, and Honourable Estates of Parliament.

*The Petition of Patrick Porterfield of Comistoun, And other  
Heritors near Adjacent to the Town of Edinburgh,*

*Humbly Sheweth,*

**T**HAT there being an Act presented in Parliament upon Friday the fourteenth day of June instant, by the Magistrates of Edinburgh, Making mention, That the saids Magistrates had been at Vast Expences in purchasing Toddies well, and some other Springs, And in making of Lead-Pipes, Conduites, and Cisterns, for conveying in the same to Edinburgh, And that the saids Fountains do not furnish sufficiency of Water for the Numerous Inhabitants of the said City, and others thereto Resorting; And that in the time of Drought or Froasts, the same do furnish little or no Water. And it being necessary for perfecting their Design, That Comistoun and all other adjacent Heritors be obliged to sell and dispone to the saids Magistrates, such Wells and Fountains as may be necessary for the use of the Burgh, Together with the Ground needfull, lying about the saids Wells, for preserving the same, And for laying of the Pipes and Conduites, for bringing in of the said Water to the Pipes, and Cisterns already made. Therefore His Majestie, &c. did impower the Lords of Privy Council to call before them the Laird of Comistoun, and any other Heritors that may be concerned, and whether they appear or not, To cause Appreiate any Wells or Springs belonging to Comistoun, or the saids other Heritors, as might be useful for the Town of Edinburgh, with the Ground next adjacent thereto; And upon their consignment of the summs, at which the same should happen to be appreiated, To decern Comistoun and all the other Heritors and Superiours, To make Resignation thereof in the Towns Favours, To the effect they may hold the same immediately of the King; And that Comistoun and the other Heritors may be discharged to Dig, Hew, or set down any Pits, Holes, or Sinks, near to the saids Wells.

This Act was appointed to ly on the Table till Thursday, the 20th. instant, To the effect that Comistoun and the other Heritors concerned, may give in their Objections against the same; And seeing the said Act is principally intended against Comistoun, He Humbly craves Liberty to Represent to my Lord Commissioner, his Grace, and the Honourable Estates of Parliament, The Severe and Hard measures he hath already met with from the Town of Edinburgh; And what further prejudice he is justly apprehensive of from them, in case the foresaid Act should pass in their Favours.

Comistouns Mother having (in his Minority) disposed Toddies well, and six Ells round the same, to the Town of Edinburgh, for the sum of 1000 merks Scots altogether, to be holden Fee of her self, and her Successours, for yearly payment of four pounds Scots, She took them expressly obliged to Repair all the Damage she should sustain by the breaking her ground to lay in their Pipes, &c. And she was so apprehensive of their further Encroachments, That in case the saids Toddies well were not sufficient to serve the Town with Water, They should be obliged to supply the same from the upper Springs in Pentlands hills; And he was only obliged to allow them liberty to convey their Pipes to Toddies well.

Albeit the Lady Comistoun, nor her Son after he succeeded in her Right, did never violate any Article of that Contract in the least; Yet the Town of Edinburgh did use many Acts of Oppression against Comistoun; ~~and~~ By casting up his ground, and leaving





leaving many Pits and Stanks open therein, by which many of the Beftial did perifh in the Winter. 2do. They did by open Bangftrie and Oppreffion take in other two Wells, to which they can pretend no imaginary Right, and builded houfes over the faids Wells. 3tio. When Comifftoun came with a Notar and Witelles, and made civil Interruption againft the laid unjust Encroachment and Oppreffion, They did put him before the Privy Council as guilty of a Ryot; And did thereby put him to very great Trouble and Expences, albeit he was Affoizied from that complaint by the Juftice of the Privy Council. 4to. They ftill retain the faids two Wells fo unwarrantably robbed by Them, and thereby Comifftoun has neither a wholefome Spring for the ufe of his own Family, Nor any convenient watering place for his Cattel: And after Comifftoun was Affoizied from their complaint before the Privy Council, One of the Members of the Town Council of Edinburgh, did in preſence of the Magiſtrates themſelves, Threaten Comifftoun to his Face, By ſaying, *That if he offered to Debate with them, they ſhould ruine him intirely, as they formerly had done the Laird of Reftalrig.*

The Laird of Comifftoun hath lately found out upon his ground both a Lime-Stone-Quarrie, with a good Coal, and a very good Copper-mine; And having ſet down a Sink for his Coal, And a quantitie of his Copper being already melted, and found ſufficient; And he being in Terms of a Bargain with ſome Engliſhmen for his Copper, by which he expects more benefite in time coming than three times the Value of his yearly Rent will amount to. His Act is levelled and contrived principally againſt Comifftoun to fruſtrate the well grounded hopes he hath of his Copper, Coal, and Lime-Stone: And therefore he humbly expects from the Juſtice of the High Court of Parliament, That no ſuch Act can paſs in Faveurs of the Town of Edinburgh, to his ſo great and evident prejudice; Becauſe, 1mo. Comifftoun's Wells being his uncontraverſed Property, And the Inheritance of his Fathers; No Law can Oblige him to ſell or Diſpoſe them to any other perſon; Eſpecially, where he is retaining and reſuſing to diſpoſe the ſame. cannot be pretended to be done, *In Emulationem*, But only for the Convenience and neceſſary Accommodation of his own Family and Lands, it being impoſſible for him to Live, or keep the Lands, Tennants-ſtead without theſe Wells. And he hath, *de facto*, been neceſſitate to keep the mains of Comifftoun in his own hand, Becauſe, no Tennant will take it from him, for fear of the Town of Edinburgh's Encroachment and Oppreffion. For ſeeing they uſed Comifftoun himſelf in manner above repreſented, What could a poor Tennant expect to meet with from them. 2do. As it is an uncontraverſed principle, *That Water is the Mother of Coals, and all other Minerals*; So Coals and all other Minerals are found near to Springs of Water, And ſeeing that Coals and Copper cannot be wrought without Sinks and Levels, And that the letting down and working thereof doth frequently Drain and take away the Water from theſe Springs; The allowing of theſe Springs to the Town of Edinburgh; And diſcharging to ſet down a Sink near to theſe Wells, imports no leſs than to diſcharge Comifftoun from working of his Coal and Copper-Mine. The Town of Edinburgh may as well crave, That Comifftoun may be Foreſeized (albeit he be guilty of no Crime, and that his Forfeiture may be gifted to the Town of Edinburgh.)

3tio. If the ſaid Act ſhould be paſt, Comifftoun ſhould be abſolutely debarred from improving his Ground by Ditching, Incloſing, and Planting; Becauſe, all Incloſures are uſeleſs where there is no Water; And where can Comifftoun have Water when all his Springs and Wells are by Act of Parliament, Appropriat and Declared to belong to the Town of Edinburgh. 4to. By this Act as it is conceived, Neither Comifftoun nor any of his Tennants can have as much as Water for their own Families, or the uſe of his Cattel, without a Licence from the Town of Edinburgh; And they might pretend to bring their Water through his own Cloſe, Dwelling houſe, or Gardens, or through the Tennants Dwelling-houſes, or Corn-yards, &c. And what an intolerable Servitude would this prove upon all Comifftoun's Eſtate? And whether or not the ſame might in a ſhort time lay the Eſtate intirely waſte, if ſetled in ſuch potent hands as the Town of Edinburgh is known to be, and whether or not, any rational man, would pay an adequate price for lands affected with ſuch an intolerable ſervitude  
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in favours of the Town, Is referred to the consideration of this high and Honourable Court. 5to. The former grounds are likewise propound for all the other Adjacent Heritors, Because if the said Act were past, they would be lyable to the Servitude and Dammmages above represented, and the Town of *Edinburgh* would thereby have the same pretence to insult over them, and oppress their Interest, and keep them from improvement thereof, which they crave by the said Act against the Laird of *Comiston*. 6to. To convince your Grace, and the Honourable Estates of Parliament, That the Town of *Edinburghs* true design in this affair. is only to fix an intollerable Servitude upon *Comiston*, and the hail other Adjacent Heritors, and to hinder them from the lawful Improvements of their own Interests, There are more Springs upon *Pentland Hills*, a little above *Toddies well*, and which may easily be brought down, and conveyed to that *Toddies well*, without doing the least prejudice to any Mans Property, than will serve the Town of *Edinburgh* three times over: And *Comiston* is expressly obliedged by his Mothers Contract, to allow them Liberty to convey the Springs from *Pentland hills* to *Toddies well*; So that seeing the Town may be abundantly served that way. It were above all measure hard to allow the Town of *Edinburgh* such an intollerable Servitude upon *Comiston* and the other Heritors, so much to their prejudice, Especially, seeing the Sinks let down, and to be set down by *Comiston*, and other Improvements intended by him, are at such a distance from *Toddies well*, and from the Springs which they may have from *Pentland hills*, That they neither are, nor ever can be prejudged thereby in the least.

*May it therefore please your Grace, and the Honourable Estates of Parliament, To consider the Premisses, and the great Prejudice and Servitude, if not the total ruine of our Fortunes, designed against us by the Town of Edinburgh, in the foresaid Act, and to reject the same as unjust and unreasonable.*

*And your Petitioners shall ever Pray, &c.*